In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-690

CHARLES W. ANDERSON and ANITA ANDERSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Missouri, petitioners, who are husband and wife, were convicted on eleven counts of having used the mails in furtherance of a scheme to defraud in violation of 18 U.S.C. 1341. They were sentenced to five years' imprisonment on five of the counts, the sentences to run consecutively, and five years on each of the remaining six counts,

the sentences on these counts to run concurrently with the others. The court of appeals affirmed the convictions on two counts which had five year consecutive sentences and reversed on the remaining counts (Pet. App. 1).

Petitioners owned and operated two corporations in St. Louis, Missouri, which sold notes, mortgages, bonds, and deeds of trust executed by the corporations and relatives of petitioners. These instruments purported to convey to the purchasers a security interest in various parcels of land in St. Louis (T. 42). As to each count, the indictment alleged that, as a part of a scheme to defraud, petitioners sold notes and deeds of trust to their customers in amounts far in excess of the actual value of the properties being held as security. It was also alleged in the indictment that petitioners knowingly made false representations that the value of the properties was far in excess of mortgages and liens against them. In order to prove the actual value of the six parcels of property involved in the indictment, the government offered the testimony of one John McDonald, the chief appraiser in the St. Louis County Department of Revenue (T. 421). At the time McDonald testified, he had in his possession the official records of St. Louis County showing the appraised "market value" and "valuation for tax purposes" of each of the six parcels in question (T. 424), but these records were not offered into evidence (T. 421-433).

The court of appeals held that the trial judge erroneously allowed McDonald's testimony into evidence over petitioners' objection since the oral testimony as

to the contents of the records, which had not been prepared by the witness, was hearsay, and deprived petitioners of the opportunity to cross-examine the person who had actually appraised the properties (Pet. App. 7a). The court reversed the convictions on the nine counts as to which McDonald's testimony was the only evidence on the question of value. On the two remaining counts the court found that there was evidence in the form of a letter signed by Charles Anderson and bankruptcy schedules signed by Anita Anderson which amply proved petitioners' knowledge that the liens against one parcel of property far exceeded its value (Pet. App. 9a).

Petitioners contend that in ruling the way it did the court of appeals failed to apply the correct standard in determining whether the inadmissible evidence had so prejudiced their case as to require reversal on all counts. From the failure of the court of appeals to mention *Chapman* v. *California*, 386 U.S. 18, petitioners assume that the court below, in finding harmless error, applied a test other than the standard of harmless beyond a reasonable doubt mandated by that decision for constitutional error. There is, however, no reason to assume that the court of appeals, which found the error to be of constitutional magnitude,[1] failed to apply the *Chapman* standard in finding such error to be harmless. Applying the *Chapman* test, the court's holding of harmless error as to the parcel involved in the two affirmed counts was justified in

[1] The government does not concede that the admission of the testimony of Mr. McDonald was an error of constitutional proportions.

light of the strength of the independent evidence of the value of the property. Without objection, the government introduced a letter written by Mr. Anderson with an attached sheet estimating the value of the lot in question to be $12,000 with a "total mortgage" of $9,500 (T. 139-140).[2] The government also introduced without objection a bankruptcy schedule signed by Mrs. Anderson which showed that the amount of the notes outstanding against the lot in fact exceeded $75,000 (T. 437). The record was thus clear that the outstanding deeds of trust issued by petitioners on the lot in question were known by them to be far in excess of the value of the lot (Pet. App. 8a-9a). In these circumstances, there is no occasion for further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

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[2] Petitioners argue that the letter had no evidentiary worth since it referred to the lot as "vacant" even though there was a structure on it. This argument ignores the facts that petitioners made no objection to the letter at trial and that there was testimony that no revenue was being derived from the structure, which was incomplete (see Pet. App. 9a).

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